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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,741	11/09/1999	YOVETTE MUMFORD	9755-009	7084

7590 01/22/2002  
YVOTTE MUMFORD  
120 JOHNSON ROAD  
WINCHESTER, MA 01890

EXAMINER

LAM, ANN Y

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 01/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/436,741

Applicant(s)

MUMFORD, YOVETTE

Examiner

Ann Y. Lam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-26 and 29-51 is/are rejected.
- 7) ☒ Claim(s) 3,4,27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bevilacqua, 5,509,907. Bevilacqua discloses a locking mechanism (60) comprising a rear locking tab (60 on surface 30) attached to one (30) of side walls of said longitudinal member and a front locking tab (60) attached to the other (31) of side walls of said longitudinal member, see Figure 9. Said front locking tab is considered to be disposed between said rear locking tab and said longitudinal slot.

As to claim 26, said rear locking tab (60 on surface 30) has a trapezoidal cross section and said front locking tab (60 on surface 31) has a trapezoidal cross section, see Figure 9.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-24 and 29-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney et al., 5,599,318, in view of Bevilacqua, 5,509,907.

Sweeney et al. discloses the invention substantially as claimed. More, specifically, Sweeney discloses a hollow base (52) disposed on an instrument in advance of a sharp end of said instrument, said base comprising at least one side lug (60), an opposing lug (58), and a side face, see Figure 4, said side face including a hole (near 16); and a longitudinal member (36 and 50) comprising a hinge end (near 50) and a cover end (36), said hinge end hingedly connected to said base, said longitudinal member being of sufficient length to cover such sharp end and having a longitudinal slot wider than such sharp end, see Figure 3, said opposing lug (58) being disposed and shaped to fit into said longitudinal slot when said safety guard is in a closed position, said longitudinal member further comprising a protrusion (56) at said hinge end, said protrusion being of such shape to be held between said at least one side lug (60) and said opposing lug (58) when said safety guard is in a closed position.

As to claims 5 and 38, said at least one side lug (60) is shaped such that said at least one side lug functions as a snap catch to lock said protrusion (56) in place when said safety guard is in a closed position.

As to claims 6, 16, 36 and 47, said longitudinal member further comprises an opening lip (40) disposed at said cover end.

As to claims 7, 17, 37 and 48, the device further comprises a hinge (50) that connects said longitudinal member to said base, said hinge comprising a microscopic helical structure.

As to claims 8, 18, 30 and 39, said base is composed of a polymeric material, and longitudinal member is composed of said polymeric material, and said microscopic helical structure is sheathed in said polymeric material, see column 8, lines 4-8.

As to claims 9, 10, and 29, said instrument (14) is attached to a support (22 and 26) from which at least four equally spaced of wings (near 26) protrudes, at least a portion of said support being enclosed within said base.

As to claim 11, said base (52) comprises a top surface through which said support (22 and 26) protrudes.

As to claim 12, said instrument (14) is a venipuncture needle.

As to claims 13 and 29, said needle (14) has a bevel (19) at it sharp end oriented to face more than 90 degrees away from said longitudinal slot when said safety guard is in the closed position.

As to claims 15, 32, and 46, said at least one side lug (58) is shaped such that said at least one side lug functions as a snap catch to lock said protrusion in place when said safety guard is in a closed position.

As to claims 19 and 49, said base (52) is hollow and further comprises a side face that contains a hole, see Figure 4.

As to claims 22, 31 and 51, said bevel (19) is oriented to face substantially 180 degrees away from said longitudinal slot when said safety guard is in the closed position.

As to claims 23 and 33, said needle (14) is the needle of a hypodermic syringe.

As to claims 24 and 34, said needle (14) is a blood collection needle.

As to claim 43, said instrument (14) is a venipuncture needle.

Sweeney however does not disclose a permanent locking mechanism comprising a rear locking tab attached to one of said side walls of said longitudinal member and a front locking tab attached to the other of said side walls of said longitudinal member, said front locking tab disposed between said rear locking tab and said longitudinal slot.

However, Bevilacqua also discloses a syringe having a longitudinal member (12) comprising a hinge end (35) and a cover end (27, 28 and 29). Bevilacqua additionally discloses a locking mechanism (60) comprising a rear locking tab (60 on surface 30) attached to one (30) of side walls of said longitudinal member and a front locking tab (60) attached to the other (31) of side walls of said longitudinal member, see Figure 9. Said front locking tab is considered to be disposed between said rear locking tab and said longitudinal slot. The locking mechanism allows needle guard (12) to be permanently secured in a guard position over needle portion (22) to prevent removal of guard (12) from the guard position over needle portion (22) in guard (12), see column 3, lines 55-59.

As to claims 2 and 14, said rear locking tab (60 on surface 30) has a trapezoidal cross section and said front locking tab (60 on surface 31) has a trapezoidal cross section, see Figure 9.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the locking mechanism as taught by Bevilacqua in the

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Sweeney syringe, in order to prevent removal of the guard from the guard position over the needle, as taught by Bevilacqua.

Furthermore, as to claims 20, 21, 40-42 and 50, needle (14) is attached to a well (26) from which at least four equally spaced wings protrude, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least a portion of said well within said base. That is, it would have been an obvious design choice to have the wings enclosed within the base or be positioned exterior to the base.

#### ***Allowable Subject Matter***

Claims 3, 4, 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Szabo, 5,913,846, discloses a shielded needle assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Seidel can be reached on (703)308-5115. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.

November 2, 2001

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER

11/5/01